

AMENDED IN SENATE JUNE 29, 2000
AMENDED IN SENATE JUNE 13, 2000
AMENDED IN ASSEMBLY MAY 1, 2000
AMENDED IN ASSEMBLY MARCH 28, 2000

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 1823

Introduced by Assembly Member Dutra

February 3, 2000

An act to amend Sections 1363 and 1368 of the Civil Code, relating to common interest developments.

LEGISLATIVE COUNSEL'S DIGEST

AB 1823, as amended, Dutra. Common interest developments: disciplinary actions.

Existing law defines and regulates common interest developments providing, among other things, that these developments shall be managed by an association. Existing law requires that an association that has adopted a policy of imposing monetary penalties shall adopt a schedule of these penalties and distribute them to members, as specified, and that a member being disciplined may request that the board of directors of the association meet in executive session and that the member is entitled to attend this meeting.

This bill would require the association's board of directors to provide specified notification to a member of a board meeting to consider or impose discipline upon that member,

and of a disciplinary action taken against the member. The bill would further provide that no disciplinary action is effective unless these notification requirements are met.

Existing law provides that an owner of a separate interest in a common interest development must provide certain items to a prospective purchaser prior to transfer of title including, among other things, a statement in writing from an authorized representative of the association as to any assessments levied against the owner's interest that are unpaid as of the date of the statement.

This bill would additionally require that the statement include any fines or penalties levied upon the owner's ~~separate~~ interest and unpaid on the date of the statement and a copy or a summary of any notice sent to the owner regarding any unresolved violation of the association's governing documents, as specified. This bill would also provide that the notice shall not be deemed a waiver of the association's right to enforce the governing documents with respect to the separate interest, as specified, and that the provisions regarding the notice do not require the association to inspect an owner's separate interest.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1363 of the Civil Code is
2 amended to read:

3 1363. (a) A common interest development shall be
4 managed by an association which may be incorporated or
5 unincorporated. The association may be referred to as a
6 community association.

7 (b) An association, whether incorporated or
8 unincorporated, shall prepare a budget pursuant to
9 Section 1365 and disclose information, if requested, in
10 accordance with Section 1368.

11 (c) Unless the governing documents provide
12 otherwise, and regardless of whether the association is
13 incorporated or unincorporated, the association may
14 exercise the powers granted to a nonprofit mutual benefit



1 corporation, as enumerated in Section 7140 of the
2 Corporations Code, except that an unincorporated
3 association may not adopt or use a corporate seal or issue
4 membership certificates in accordance with Section 7313
5 of the Corporations Code.

6 The association, whether incorporated or
7 unincorporated, may exercise the powers granted to an
8 association by Section 383 of the Code of Civil Procedure
9 and the powers granted to the association in this title.

10 (d) Meetings of the membership of the association
11 shall be conducted in accordance with a recognized
12 system of parliamentary procedure or any parliamentary
13 procedures the association may adopt.

14 (e) Notwithstanding any other provision of law, notice
15 of meetings of the members shall specify those matters
16 the board intends to present for action by the members,
17 but, except as otherwise provided by law, any proper
18 matter may be presented at the meeting for action.

19 (f) Members of the association shall have access to
20 association records in accordance with Article 3
21 (commencing with Section 8330) of Chapter 13 of Part 3
22 of Division 2 of Title 1 of the Corporations Code.

23 (g) If an association adopts or has adopted a policy
24 imposing any monetary penalty, including any fee, on any
25 association member for a violation of the governing
26 documents or rules of the association, including any
27 monetary penalty relating to the activities of a guest or
28 invitee of a member, the board of directors shall adopt
29 and distribute to each member, by personal delivery or
30 first-class mail, a schedule of the monetary penalties that
31 may be assessed for those violations, which shall be in
32 accordance with authorization for member discipline
33 contained in the governing documents. The board of
34 directors shall not be required to distribute any additional
35 schedules of monetary penalties unless there are changes
36 from the schedule that was adopted and distributed to the
37 members pursuant to this subdivision. The board of
38 directors of the association shall meet in executive session
39 if requested by the member being disciplined, and the
40 member shall be entitled to attend the executive session.

1 (h) When the board of directors is to meet to consider
2 or impose discipline upon a member, the board shall
3 notify the member in writing, by either personal delivery
4 or first-class mail, at least 15 days prior to the meeting. The
5 notification shall contain, at a minimum, the date, time
6 and place of the meeting, the nature of the alleged
7 violation for which a member may be disciplined, and a
8 statement that the member has a right to attend and may
9 address the board at the meeting. If the board imposes
10 discipline on a member, the board shall provide a
11 notification of the disciplinary action by either personal
12 delivery or first-class mail to the member within~~15~~ 10
13 days following the action. A disciplinary action shall not
14 be effective against a member unless the board fulfills the
15 requirements of this subdivision.

16 (i) Whenever two or more associations have
17 consolidated any of their functions under a joint
18 neighborhood association or similar organization,
19 members of each participating association shall be
20 entitled to attend all meetings of the joint association
21 other than executive sessions, (1) shall be given
22 reasonable opportunity for participation in those
23 meetings and (2) shall be entitled to the same access to
24 the joint association's records as they are to the
25 participating association's records.

26 (j) Nothing in this section shall be construed to create,
27 expand, or reduce the authority of the board of directors
28 of an association to impose monetary penalties on an
29 association member for a violation of the governing
30 documents or rules of the association.

31 SEC. 2. Section 1368 of the Civil Code is amended to
32 read:

33 1368. (a) The owner of a separate interest, other than
34 an owner subject to the requirements of Section 11018.6
35 of the Business and Professions Code, shall, as soon as
36 practicable before transfer of title to the separate interest
37 or execution of a real property sales contract therefor, as
38 defined in Section 2985, provide the following to the
39 prospective purchaser:

1 (1) A copy of the governing documents of the common
2 interest development.

3 (2) If there is a restriction in the governing documents
4 limiting the occupancy, residency, or use of a separate
5 interest on the basis of age in a manner different from that
6 provided in Section 51.3, a statement that the restriction
7 is only enforceable to the extent permitted by Section
8 51.3 and a statement specifying the applicable provisions
9 of Section 51.3.

10 (3) A copy of the most recent documents distributed
11 pursuant to Section 1365.

12 (4) A true statement in writing obtained from an
13 authorized representative of the association as to the
14 amount of the association's current regular and special
15 assessments and fees, any assessments levied upon the
16 owner's interest in the common interest development
17 that are unpaid on the date of the statement, and any
18 monetary fines or penalties levied upon the owner's
19 ~~separate~~ interest and unpaid on the date of the statement.
20 The statement obtained from an authorized
21 representative shall also include true information on late
22 charges, interest, and costs of collection which, as of the
23 date of the statement, are or may be made a lien upon the
24 owner's interest in a common interest development
25 pursuant to Section 1367.

26 (5) A copy or a summary of any notice previously sent
27 to the owner pursuant to subdivision (h) of Section 1363
28 that sets forth any alleged violation of the governing
29 documents that remains unresolved at the time of the
30 request. The notice shall not be deemed a waiver of the
31 association's right to enforce the governing documents
32 against the owner or the prospective purchaser of the
33 separate interest with respect to any violation. This
34 paragraph shall not be construed to require an association
35 to inspect an owner's separate interest.

36 (6) A copy of the preliminary list of defects provided
37 to each member of the association pursuant to Section
38 1375, unless the association and the builder subsequently
39 enter into a settlement agreement or otherwise resolve
40 the matter and the association complies with Section

1 1375.1. Disclosure of the preliminary list of defects
2 pursuant to this paragraph shall not waive any privilege
3 attached to the document. The preliminary list of defects
4 shall also include a statement that a final determination
5 as to whether the list of defects is accurate and complete
6 has not been made.

7 (7) A copy of the latest information provided for in
8 Section 1375.1.

9 (8) Any change in the association's current regular
10 and special assessments and fees which have been
11 approved by the association's board of directors, but have
12 not become due and payable as of the date disclosure is
13 provided pursuant to this subdivision.

14 (b) Upon written request, an association shall, within
15 10 days of the mailing or delivery of the request, provide
16 the owner of a separate interest with a copy of the
17 requested items specified in paragraphs (1) to (8),
18 inclusive, of subdivision (a). The association may charge
19 a fee for this service, which shall not exceed the
20 association's reasonable cost to prepare and reproduce
21 the requested items.

22 (c) An association shall not impose or collect any
23 assessment, penalty, or fee in connection with a transfer
24 of title or any other interest except the association's actual
25 costs to change its records and that authorized by
26 subdivision (b).

27 (d) Any person or entity who willfully violates this
28 section shall be liable to the purchaser of a separate
29 interest which is subject to this section for actual damages
30 occasioned thereby and, in addition, shall pay a civil
31 penalty in an amount not to exceed five hundred dollars
32 (\$500). In an action to enforce this liability, the prevailing
33 party shall be awarded reasonable attorneys' fees.

34 (e) Nothing in this section affects the validity of title
35 to real property transferred in violation of this section.

36 (f) In addition to the requirements of this section, an
37 owner transferring title to a separate interest shall

1 comply with applicable requirements of Sections 1133
2 and 1134.

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